

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Jorge Manuel Aucacama, *individually and on
behalf of others similarly situated.*

Plaintiff,

-against-

CP Prince St LLC (d/b/a Coco Pazzo), Alessandro
Bandini, Pino Doe, Joseph Essa, and Giuseppe
Louongo,

Defendants.

19-cv-04245-VEC

**SETTLEMENT AGREEMENT
AND
RELEASE**

This Settlement Agreement and Release of Claims ("Agreement") is entered into by and among Plaintiff Jorge Manuel Aucacama ("Plaintiff Aucacama") on the one hand, CP Prince St LLC (d/b/a Coco Pazzo), ("Defendant Corporation"), Alessandro Bandini, Joseph Essa, and Giuseppe Louongo, ("Individual Defendants"), (collectively, "Defendants"), on the other hand.

WHEREAS, Plaintiff Aucacama alleges that he worked for Defendants as an employee; and

WHEREAS, a dispute has arisen regarding Plaintiff Aucacama's alleged employment and the terms thereof, which dispute has resulted in the filing of an action in the United States District Court for the Southern District of New York, Civil Action No: 19-cv-04245-VEC (hereinafter "the Litigation"), alleging, among other things, a violation of federal and state wage and hour and overtime laws;

WHEREAS, Defendants deny any violation of federal and state wage and hour and overtime laws; and

WHEREAS, the parties desire to resolve all disputes between them without the necessity of further litigation;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, it is hereby agreed as follows:

1. Payment: Defendants shall pay or cause to be paid to Plaintiff Aucacama, subject to the terms and conditions of this Agreement, and as full, complete, and final settlement and final satisfaction of any and all claims or potential claims Plaintiff Aucacama may have against Defendants through

the Effective Date of this Agreement, including all counsel fees and costs incurred by Plaintiff Aucacama, the gross sum of Twenty-Two Thousand Dollars and No Cents (\$22,000.00) (the "Settlement Amount") to be paid to Plaintiff Aucacama's attorneys in Six ("6") installments, as follows:

- (a) Installment One: A post-dated check in the amount of Three Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$3,666.67) made payable to "Michael A. Faillace, Esq., as Attorney for Plaintiff," for immediate deposit Thirty Days (30) after court approval of the settlement agreement, delivered to Plaintiff's counsel. Of this amount, \$1,222.22 shall be apportioned to Plaintiff's counsel as attorneys' fees and costs, and the remainder (\$2,444.45), shall be apportioned to Plaintiff.
- (b) Installment Two: A post-dated check in the amount of Three Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$3,666.67) made payable to "Michael A. Faillace, Esq., as Attorney for Plaintiff," for immediate deposit Sixty Days (60) after court approval of the settlement agreement, delivered to Plaintiff's counsel. Of this amount, \$1,222.22 shall be apportioned to Plaintiff's counsel as attorneys' fees and costs, and the remainder (\$2,444.45), shall be apportioned to Plaintiff.
- (c) Installment Three: A post-dated check in the amount of Three Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$3,666.67) made payable to "Michael A. Faillace, Esq., as Attorney for Plaintiff," for immediate deposit Ninety Days (90) after court approval of the settlement agreement, delivered to Plaintiff's counsel. Of this amount, \$1,222.22 shall be apportioned to Plaintiff's counsel as attorneys' fees and costs, and the remainder (\$2,444.45), shall be apportioned to Plaintiff.
- (d) Installment Four: A post-dated check in the amount of Three Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$3,666.67) made payable to "Michael A. Faillace, Esq., as Attorney for Plaintiff," for immediate deposit One Hundred Twenty Days (120) after court approval of the settlement agreement, delivered to Plaintiff's counsel. Of this amount, \$1,222.22 shall be apportioned to Plaintiff's counsel as attorneys' fees and costs, and the remainder (\$2,444.45), shall be apportioned to Plaintiff.
- (e) Installment Five: A post-dated check in the amount of Three Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$3,666.67) made payable to "Michael A. Faillace, Esq., as Attorney for Plaintiff," for immediate deposit One Hundred Fifty Days (150) after court approval of the settlement agreement, delivered to Plaintiff's counsel. Of this amount, \$1,222.22 shall be apportioned to Plaintiff's counsel as attorneys' fees and costs, and the remainder (\$2,444.45), shall be apportioned to Plaintiff.
- (f) Installment Six: A post-dated check in the amount of Three Thousand Six Hundred Sixty-Six Dollars and Sixty-Five Cents (\$3,666.65) made payable to "Michael A. Faillace, Esq., as Attorney for Plaintiff," for immediate deposit One Hundred Eighty Days (180) after court approval of the settlement agreement, delivered to Plaintiff's counsel. Of this amount, \$1,222.23 shall be apportioned to Plaintiff's counsel as attorneys' fees and costs, and the remainder (\$2,444.42), shall be apportioned to Plaintiff.

Within 30 days of this Agreement being approved by the Court, all of the post-dated checks/payments set forth above shall be delivered to the office of Michael Faillace & Associates, P.C. to the attention of Michael Faillace, Esq., 60 East 42nd Street, Suite 4510, New York, NY 10165. Failure to deliver said checks shall constitute a default under the Agreement.

(a). Concurrently with the execution of this Agreement, Defendants CP Prince St LLC (d/b/a Coco Pazzo), Alessandro Bandini, Joseph Essa, and Giuseppe Loungo shall each execute and deliver to Plaintiff Aucacama's counsel confessions of judgment ("Confessions of Judgment") in the form annexed hereto as Exhibits A-D. The Parties hereby acknowledge and agree that the Confessions of Judgments will be held in escrow by Plaintiff Aucacama's counsel, and will not be entered and/or filed at any time other than (i) in the event that the Defendants fail to make any of the installment payments as set forth above, i.e., one of the postdated checks fails to clear Plaintiff Aucacama's counsel's escrow account, or Defendants fail to deliver the payments to Plaintiff Aucacama's counsel within thirty days of the Court approving the Agreement, and (ii) Defendants fail to cure such default within ten (10) business days of receipt of written notice (to be delivered to Defendants by first class mail via their counsel, Lee Nolan Jacobs, Esq., at 110 William Street, Suite 1410, New York, NY 10038. Any such Notice of Default shall be deemed received five (5) days after it is mailed.

2. Release and Covenant Not To Sue: Plaintiff Aucacama hereby irrevocably and unconditionally releases from and forever discharges and covenant not to sue Defendants, and for each of them, their heirs, successors, assigns, affiliates, parent organizations, subsidiaries, directors, owners, shareholders, members, agents, attorneys, legal representatives and managers any and all charges, complaints, claims, causes of action, suits, debts, liens, contracts, rights, demands, controversies, losses, costs and or expenses, including legal fees and any other liabilities of any kind or nature whatsoever, known or unknown, suspected or unsuspected, whether fixed or contingent (hereinafter referred to as "claim" or "claims") which Plaintiff Aucacama at any time has, had, claims or claimed to have against Defendants relating specifically to the wage and hour claims in the Litigation that have occurred as of the Effective Date of this Agreement. Similarly, Defendants release and discharge Plaintiff Aucacama from any and all known claims, and liabilities of any kind that they have, had or claimed to have against Plaintiff Aucacama relating specifically to the wage and hour claims in the Litigation that have occurred as of the Effective Date of this Agreement.

3. No Admission of Wrongdoing: This Agreement and compliance with this Agreement shall not be construed as an admission by Defendants of any liability whatsoever, or of any violation of any statute, regulation, duty, contract, right or order.

4. Modification of the Agreement: This Agreement may not be changed unless the changes are in writing and signed by a proper representative of Plaintiff Aucacama and Defendants.

5. Acknowledgments: Plaintiff Aucacama and Defendants acknowledge that they are not relying upon any statement, representation or promise in executing this Agreement except for statements, representations or promises expressly set forth in this Agreement. They further acknowledge and agree that the only consideration for signing this Agreement is as set forth in this Agreement.

6. **Notices:** Notices required under this Agreement shall be in writing and shall be deemed given on the first business day following first-class mailing and electronic transmission thereof. Notice hereunder shall be delivered to:

To Plaintiff Aucacama:

Michael Faillace, Esq.
MICHAEL FAILLACE & ASSOCIATES, P.C.
60 East 42nd St. Suite 4510
New York, NY 10165
Tel: (212) 317-1200
Fax: (212) 317-1620
Email: michael@faillacelaw.com

To Defendants:

Lee Nolan Jacobs
Helbraun & Levey LLP
110 William Street, Suite 1410
New York, NY 10038
Tel: (212) 219-1193
Fax: (212) 226-7554
Email: lee@helbraunlevey.com

7. **Governing Law:** This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of New York, excluding the conflict-of-laws principles thereof. The parties consent and stipulate to the personal jurisdiction of the United States District Court for the Southern District of New York and the Supreme Court of the State of New York in any subsequent proceeding to enforce this Agreement.

8. **Enforceability:** If any provision of this Agreement is held to be illegal, void, or unenforceable, such provision shall be of no force or effect. However, the illegality or unenforceability of such provision shall have no effect upon, and shall not impair the legality or enforceability of, any other provision of this Agreement, provided, however, that upon any finding by a court of competent jurisdiction that a release or waiver of claims or rights or a covenant set forth herein is illegal, void or unenforceable, Plaintiff Aucacama agrees to promptly execute a release, waiver and/or covenant that is legal and enforceable.

9. **Release Notification:** Defendants advised Plaintiff to discuss the terms of this Agreement and release of claims with their legal counsel and Plaintiff acknowledges that he has consulted with Michael Faillace, Esq. of Michael Faillace & Associates, P.C., Plaintiff Aucacama acknowledges that it is his choice to waive any potential claims in return for the benefits set forth herein and that each of them made this decision after careful thought and a reasonable period of time to consider this Agreement, and after an opportunity to consult with their attorneys. Plaintiff

Aucacama confirms that this Settlement Agreement and Release has been translated to him in Spanish and that he understands the terms of this Agreement and that he is signing this Agreement voluntarily.

10. Counterparts: To signify their agreement to the terms of this Agreement and Release, the parties have executed this Agreement on the date set forth opposite their signatures, which appear below. This Agreement may be executed in two or more counterparts and each of such counterparts, for all purposes, shall be deemed to be an original but all of such counterparts together shall constitute but one and the same instrument, binding upon all parties hereto, notwithstanding that all of such parties may not have executed the same counterpart. This agreement may also be executed by facsimile transmission.

PLAINTIFF:

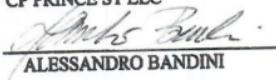
By: 
JORGE MANUEL AUCACAMA

Date: 3-3-20

DEFENDANTS:

By: 
CP PRINCE ST LLC

Date: 4/13/20

By: 
ALESSANDRO BANDINI

Date: 4/13/20

By: 
JOSEPH ESSA

Date: _____

By: 
GIUSEPPE LOUNGO

Date: 4/13/20

Aucacama confirms that this Settlement Agreement and Release has been translated to him in Spanish and that he understands the terms of this Agreement and that he is signing this Agreement voluntarily.

10. Counterparts: To signify their agreement to the terms of this Agreement and Release, the parties have executed this Agreement on the date set forth opposite their signatures, which appear below. This Agreement may be executed in two or more counterparts and each of such counterparts, for all purposes, shall be deemed to be an original but all of such counterparts together shall constitute but one and the same instrument, binding upon all parties hereto, notwithstanding that all of such parties may not have executed the same counterpart. This agreement may also be executed by facsimile transmission.

PLAINTIFF:

By: Jorge M Aucacama
JORGE MANUEL AUCACAMA

Date: 3-3-20

DEFENDANTS:

By: _____
CP PRINCE ST LLC

Date: _____

By: _____
ALESSANDRO BANDINI

Date: _____

By: _____
JOSEPH ESSA

Date: 4/13/20

By: _____
GIUSEPPE LOUNGO

Date: _____

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK

----- x -----
Jorge Manuel Aucacama *individually and* :
on behalf of others similarly situated, :
: Index No.:
Plaintiff, :
: -----
-against- : **AFFIDAVIT OF CONFESSION OF**
CP Prince St LLC (d/b/a Coco Pazzo), : **JUDGMENT**
Alessandro Bandini, Joseph Essa, and :
Giuseppe Loungo, :
: -----
Defendants. :
----- x -----

STATE OF NEW YORK)
: ss.:
COUNTY OF)

1. I reside in New York County.

2. I, Alessandro Bandini, am the President CP Prince St LLC (d/b/a Coco Pazzo). I am duly authorized to make this affidavit of confession of judgment on behalf of CP Prince St LLC (d/b/a Coco Pazzo).

3. CP Prince St LLC (d/b/a Coco Pazzo), maintains its principal place of business in New York County at 160 Prince Street, New York, NY 10012.

4. Pursuant to the terms of the Settlement Agreement and Release by and between Jorge Manuel Aucacama ("Plaintiff") and CP Prince St LLC (d/b/a Coco Pazzo), Alessandro Bandini, Joseph Essa, and Giuseppe Loungo (each a "Defendant" and collectively, "Defendants"), to which this Affidavit is annexed, I hereby confess judgment and authorize entry thereof against CP Prince St LLC (d/b/a Coco Pazzo) in favor of Plaintiff for the sum of Twenty-Two Thousand Dollars and No Cents (\$22,000.00), less any payments made under the Settlement Agreement.

5. This affidavit of confession of judgment is for a debt justly due to Plaintiff under the terms of the Settlement Agreement, to which this Affidavit is annexed, which provides that Defendants are to submit a total sum of \$22,000.00 to Plaintiff. The amount of this affidavit of confession of judgment represents the settlement amount of \$22,000.00.

4. This affidavit is made upon good and valuable consideration, the sufficiency of which I acknowledge on behalf of Defendants, including, without limitation, the terms and provisions of the Settlement Agreement.

5. I hereby represent my understanding that upon Defendants' breach of the Settlement Agreement and failure to cure, this Confession of Judgment shall be docketed and entered in the Supreme Court of the State of New York as a judgment for \$22,000.00 (less any amounts already paid to Plaintiff pursuant to the above schedule), against CP Prince St LLC (d/b/a Coco Pazzo).

CP Prince St LLC

By: 
Alessandro Bandini
Title: President

STATE OF New York)

: ss.:

On April 16, 2020, before me personally came Alessandro Bandini, to me known, who, by me duly sworn, did depose and say that deponent resides at 144 Houston St #2, NY NY 10012, that deponent is the President of CP Prince St LLC the party described herein, and that deponent executed the foregoing Affidavit of Confession of Judgment on behalf of CP Prince St LLC and was authorized to do so.


Notary Public

RYAN MATTHEW BOGATZ
NOTARY PUBLIC-STATE OF NEW YORK
No 02B06372174
Qualified in New York County
My Commission Expires 03-12-2022

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK

----- X

Jorge Manuel Aucacama, individually and on behalf of others similarly situated,	:	
Plaintiff,	:	Index No.:
-against-	:	
CP Prince St LLC (d/b/a Coco Pazzo), Alessandro Bandini, Joseph Essa, and Giuseppe Loungo,	:	<u>AFFIDAVIT OF CONFESSION OF JUDGMENT</u>
Defendants.	:	

----- X

STATE OF NEW YORK)
: ss.:
COUNTY OF)

1. I reside in New York County.

2. Pursuant to the terms of the Settlement Agreement and Release by and between Jorge Manuel Aucacama ("Plaintiff") CP Prince St LLC (d/b/a Coco Pazzo), Alessandro Bandini, Joseph Essa, and Giuseppe Loungo (each a "Defendant" and collectively, "Defendants"), to which this Affidavit is annexed, I hereby confess judgment and authorize entry thereof against me individually and in favor of Plaintiff Aucacama for the sum of Twenty-Two Thousand Dollars and No Cents (\$22,000.00), less any payments made under the Settlement Agreement.

3. This affidavit of confession of judgment is for a debt justly due to Plaintiff Aucacama under the terms of the Settlement Agreement, to which this Affidavit is annexed, which provides that Defendants are to submit a total sum of \$22,000.00 to Plaintiff Aucacama. The amount of this affidavit of confession of judgment represents the settlement amount of \$22,000.00.

4. This affidavit is made upon good and valuable consideration, the sufficiency of which I acknowledge on behalf of Defendants, including, without limitation, the terms and provisions of the Settlement Agreement.

5. I hereby represent my understanding that upon Defendants' breach of the Settlement Agreement and failure to cure, this Confession of Judgment shall be docketed and entered in the Supreme Court of the State of New York as a judgment for \$22,000.00 (less any amounts already paid to Plaintiff pursuant to the above schedule), against me, Alessandro Bandini.

Bandini.



Alessandro Bandini

Sworn to before me this
16 day of April 2020



Notary Public

RYAN MATTHEW BOGATZ
NOTARY PUBLIC-STATE OF NEW YORK
No. 02B06372174
Qualified in New York County
My Commission Expires 03-12-2022

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK

Jorge Manuel Aucaacama, *individually and
on behalf of others similarly situated*,
Plaintiff,
-against-
CP Prince St LLC (d/b/a Coco Pazzo),
Alessandro Bandini, Joseph Essa, and
Giuseppe Loungo,
Defendants.
Index No.:
**AFFIDAVIT OF CONFESSION OF
JUDGMENT**

STATE OF NEW YORK)
: SS.:
COUNTY OF)

I. I reside in Clark County, N.V.

2. Pursuant to the terms of the Settlement Agreement and Release by and between Jorge Manuel Aucacama ("Plaintiff") CP Prince St LLC (d/b/a Coco Pazzo), Alessandro Bandini, Joseph Essa, and Giuseppe Loungo (each a "Defendant" and collectively, "Defendants"), to which this Affidavit is annexed, I hereby confess judgment and authorize entry thereof against me individually and in favor of Plaintiff Aucacama for the sum of Twenty-Two Thousand Dollars and No Cents (\$22,000.00), less any payments made under the Settlement Agreement.

3. This affidavit of confession of judgment is for a debt justly due to Plaintiff Aucacama under the terms of the Settlement Agreement, to which this Affidavit is annexed, which provides that Defendants are to submit a total sum of \$22,000.00 to Plaintiff Aucacama. The amount of this affidavit of confession of judgment represents the settlement amount of \$22,000.00.

4. This affidavit is made upon good and valuable consideration, the sufficiency of which I acknowledge on behalf of Defendants, including, without limitation, the terms and provisions of the Settlement Agreement.

5. I hereby represent my understanding that upon Defendants' breach of the Settlement Agreement and failure to cure, this Confession of Judgment shall be docketed and entered in the Supreme Court of the State of New York as a judgment for \$22,000.00 (less any amounts already paid to Plaintiff pursuant to the above schedule), against me, Joseph Essa.

State of NV
County of Clark
Sworn to before me this
13 day of April 2020
Notary Public

Joseph Essa

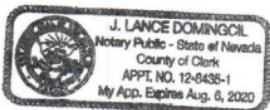


EXHIBIT D

SUPREME COURT OF THE STATE OF NEW YORK

----- X

Jorge Manuel Aucacama, <i>individually and</i>	:	
<i>on behalf of others similarly situated,</i>	:	
	:	Index No.:
<i>Plaintiff,</i>	:	
	:	
<i>-against-</i>	:	<u>AFFIDAVIT OF CONFESSION OF</u>
	:	<u>JUDGMENT</u>
CP Prince St LLC (d/b/a Coco Pazzo),	:	
Alessandro Bandini, Joseph Essa, and	:	
Giuseppe Loungo,	:	
	:	
<i>Defendants.</i>	:	

----- X

STATE OF NEW YORK)
: ss.:
COUNTY OF)

1. I reside in Fairfield County, CT.

2. Pursuant to the terms of the Settlement Agreement and Release by and between Jorge Manuel Aucacama ("Plaintiff") CP Prince St LLC (d/b/a Coco Pazzo), Alessandro Bandini, Joseph Essa, and Giuseppe Loungo (each a "Defendant" and collectively, "Defendants"), to which this Affidavit is annexed, I hereby confess judgment and authorize entry thereof against me individually and in favor of Plaintiff Aucacama for the sum of Twenty-Two Thousand Dollars and No Cents (\$22,000.00), less any payments made under the Settlement Agreement.

3. This affidavit of confession of judgment is for a debt justly due to Plaintiff Aucacama under the terms of the Settlement Agreement, to which this Affidavit is annexed, which provides that Defendants are to submit a total sum of \$22,000.00 to Plaintiff Aucacama. The amount of this affidavit of confession of judgment represents the settlement amount of \$22,000.00.

4. This affidavit is made upon good and valuable consideration, the sufficiency of which I acknowledge on behalf of Defendants, including, without limitation, the terms and provisions of the Settlement Agreement.

5. I hereby represent my understanding that upon Defendants' breach of the Settlement Agreement and failure to cure, this Confession of Judgment shall be docketed and entered in the Supreme Court of the State of New York as a judgment for \$22,000.00 (less any amounts already paid to Plaintiff pursuant to the above schedule), against me, Giuseppe Loungo.



Giuseppe Loungo

Sworn to before me this
14 day of April 2020



Notary Public

RYAN MATTHEW BOGATZ
NOTARY PUBLIC-STATE OF NEW YORK
No. 02806372174
Qualified in New York County
My Commission Expires 03-12-2022